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In The

Supreme Court Of The United States

OCTOBER TERM, 1971

NO. 71-134

JAY LEE GIBSON,
Petitioner,

v.

MISSOURI PACIFIC RAILROAD COMPANY,
Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For The Fifth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX

Table of Contents

	Page
Opinions Below	1, 2
Questions Presented for Review	2, 3
Statement of the Case	4-11
1. The Record	4
2. Gibson v. Thompson	4-6
3. The Plaintiff's claim or grievance against the Railroad	6-9
4. Gibson v. Johnson	9-10
5. This suit, Gibson v. Missouri Pacific	10-11
Reasons for Not Granting the Writ	11-35
Summary of the Argument	11-12
Argument	12-35
1. If there are any points in the Petition which require consideration, the Petitioner-Plaintiff has not presented with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of those points.	12-30
A. It is improper to assume that the District Court's judgment was merely an interlocutory order.	12-13
B. The Petitioner-Plaintiff definitely lost his case before the National Railroad Adjustment Board.	14-18
C. The Petitioner-Plaintiff was not disciplined and his case was not treated by the Defendant as a disciplinary matter.	18, 19

Page

D. The Petitioner-Plaintiff was not denied the advice of counsel. 19-23

E. The Petitioner-Plaintiff was not denied a hearing. 23-26

F. After losing his case before the National Railroad Adjustment Board, the Petitioner-Plaintiff had time to sue his Union for damages for causing him to lose it, and he did not try to file the present suit until after he had lost his suit against his Union. 26-27

G. Since this Court has already refused to review or disturb the unsuccessful outcome of the Petitioner-Plaintiff's suit against his Union, his charges of misconduct by his Union, during the period involved in that suit, from 1958 to 1965, would not constitute grounds for review of the unsuccessful outcome of his present suit against his Employer. 27-30

2. The Judgment of the Court of Appeals was correct. 30-35

A. As held by the Court of Appeals, this action is barred by limitations under 45 US Code Section 153, because it was not filed until June 1, 1966. 30

B. The Plaintiff is not entitled to relitigate, in the present suit, the same estoppel issue that was finally decided against him in the previous suit, which he voluntarily brought in State Court, and voluntarily presented to the Courts at every level from the Trial Court to this Court. 30-35

Page

C. Other reasons, which were pleaded and preserved in the District Court, and were asserted and briefed in the Court of Appeals, and are included within the Questions Presented, also support the Judgment. 35

Conclusion 36

Appendix: Chronological Index to the Printed Record A-1 to A-15

Cases

Page

Adriaanse v. U. S., 184 F. 2d 968 (2nd Cir., 1950) cer. den. 340 U. S. 932 (1951) 35

Benson v. Wanda Petroleum Co., Appendix M, pages 80-85, Petition 34

Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, U. S. Supreme Court No. 338, decided May 3, 1971; 39 U. S. Law Week 4506, 28 L. Ed. 2d 788. ..... 33, 34, 35

Crockett v. Union Terminal Co., 342 SW 2d 129 (Tex. Civ. App., Dallas, 1960) 35

Crosland-Cullen Co. v. Crosland, 105 SE 2d 655 (N. C., 1958) 33

Gibson v. Johnson, 414 SW 2d 235 (Tex. Civ. App., Tyler, 1967, writ of error refused, no reversible error), Cer. Den. 390 US 946 (1968) 9, 10, 21, 29, 30-33, A-9, A-10, A-12, A-13, A-15

Gibson v. Thompson, 355 US 18 (1957); See Thompson v. Gibson. 4, 6, 21, A-1, A-2

Lober v. Moore, 417 F. 2d 714 (D. of Col., 1969) 35

O'Brien v. Western Union Tel. Co., 113 F. 2d 539 (1st Cir., 1940) 35

Philadelphia Life Ins. Co. v. Crosland-Cullen Co., 234 F. 2d 780 (4th Cir., 1956) 33

Taylor v. Fin[illegible], 418 F. 2d 1232 (8th Cir., 1969) 11

Textile Workers Union of America v. Lincoln Mills of Ala., 353 US 448 (1957) 35

Page

Thompson v. Gibson, 290 SW 2d 305 (Tex. Civ. App., Ft. Worth, 1956); Reversed 298 SW 2d 97, (Tex. 1957); Reversed sub nomine *Gibson v. Thompson*, 355 US 18 (1957); on remand 310 SW 2d 564 (Tex. 1958) 6

Union Pacific Ry. Co. v. Prince, 360 US 601 (1959) 15

Statutes

28 U. S. Code Sec. 1291 13

28 U. S. Code Sec. 1292(b) 12, 13

45 U. S. Code Sec. 153 ..... 7, 30, 34, A-10

45 U. S. Code Sec. 228 11

Other Authorities

"The Federal Common Law," 82 Harvard Law Review 1512 (May, 1969) 35

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Opinions Below

The District Court set aside Award 20369 of the First Division of the National Railroad Adjustment Board by Memorandum Opinion and Order, which was issued on June 17, 1970, and is reported at 314 F. Supp. 1211, and is also reproduced in Appendix E of the Petition on

pages 22 to 34. This Order was amended on July 10, 1970 by an order which is reproduced in Appendix E on pages 35 and 36 of the Petition. The Court of Appeals reversed the action of the District Court, by a judgment entered on April 26, 1971, which is reproduced at page 77 of the Petition in Appendix J. The Opinion of the Court of Appeals, rendered on April 26, 1971, is reported at 441 F 2nd 784, and is reproduced in Appendix I to the Petition, on pages 69 to 76.

Questions Presented for Review

A. Whether this suit, to set aside an Award of the National Railroad Adjustment Board, which was rendered on October 31, 1963, and did not contain a money award, is barred because it was not filed until June 1, 1966, nor prosecuted until after the termination, on March 4, 1968, of a prior inconsistent suit by the same Plaintiff.

B. Whether the Plaintiff's present suit, to set aside the Award of the National Railroad Adjustment Board and claim the right to resume work for the Railroad, is *barred by the Plaintiff's previous action*, in filing and prosecuting to an unsuccessful conclusion, a suit for damages which was based on the inconsistent and uncontested position that the Award was final and precluded him from claiming the right to resume work for the Railroad.

C. Whether the *final adjudication*, in the Plaintiff's prior suit against the Union, to the effect that he is

estopped to deny his permanent disability to resume work for the Railroad as a Locomotive Engineer, *bars* the Plaintiff from relitigating the same issue in his present suit against the Railroad.

D. Whether the District Court had jurisdiction to review and set aside this Award of the National Railroad Adjustment Board, and to order the Board to make a new and different Award on the merits, when the District Court expressly found that there was no evidence of fraud or corruption by a member of the Board, and no question as to the proper exercise of the Board's jurisdiction.

E. Whether the District Court correctly decided that this Award of the National Railroad Adjustment Board was clearly arbitrary, and "indisputedly without foundation in reason or fact," in ruling that the Plaintiff was not entitled to resume work for the Railroad as a Locomotive Engineer because he was estopped to deny that he was permanently disabled for such work, in view of the fact that the Plaintiff had recovered in Court from the Railroad his damages based on future earnings under his claim that he was permanently disabled for such work, and in view of the fact that, in another suit by this same Plaintiff, the Courts at every level had already agreed with the Board's Award, and the Supreme Court of the United States had refused to disturb their decision.

A Concise Statement of the Case.

1. The Record.

The Respondent has requested the Clerk of the Court of Appeals to certify and transmit to this Court proceedings in the Court of Appeals, and the record which was printed for the use of the Court below, which Record consists of a one-volume Appendix, and one additional volume of Exhibits. References in this Brief are to the Appendix Volume, or Exhibit Volume, unless they state otherwise. Because of the quantity, and haphazard sequence, of the material in those two volumes, a Chronological Index to the material is set forth in Appendix A to this Brief.

2. Gibson v. Thompson.

The Plaintiff, who has had an employee relationship with the Railroad since 1927, holds seniority as a Locomotive Engineer. Because of an injury, which he suffered on December 5, 1950, he discontinued work after working on January 12, 1951, and he has not performed any work for the Railroad since then. He sued the Railroad for his damages by reason of that injury, and he was awarded, and he collected, a judgment in that suit. (Exhibits, pages 219-221, 422-424).

In his First Amended Original Petition (Ex. 328-331), filed on June 25, 1955, the Plaintiff alleged that he fell while at work on December 5, 1950, and that, as a result of that fall, he suffered "serious, permanent and disabling injuries," and that his injury was "of such a degree

as to seriously injure his back and permanently impair Plaintiff's ability to work and earn money." He expressly claimed damages for the loss of future earnings "because of Plaintiff's disability to work, which is permanent." At the trial, which began on July 11, 1955, he presented testimony by a Dr. Donovan that he "would require a special fusion to eliminate the symptoms," but would not be able to return to work. (Ex. 28, 29). He also presented the testimony of a Dr. White that he was "totally and permanently disabled from performing any type of manual labor," and that he had "a permanent disability, which will not improve from any further treatment or observation." (Ex. 32). The Railroad offered medical evidence to the effect that the Plaintiff's continuing condition consisted of a congenital anomoly and a type of arthritis which was not a result of the fall. (Ex. 32-34).

The jury was instructed, in effect, that they should not allow any recovery of damages by reason of any condition or loss which was not caused or aggravated by the fall. They were also instructed that they were to diminish the amount of his damages in proportion to the amount of negligence attributable to the Plaintiff. In the light of these instruction, the jury returned a verdict, on July 15, 1955, in which they found both the Plaintiff and the Railroad negligent, and assessed the Plaintiff's recoverable damages at $32,500.00. A judgment in that amount was entered against the Railroad on August 5, 1955. (Ex. 98-103, 332-337).

On appeal, the Supreme Court of Texas, in 1957, held that the "record is devoid of evidence supporting the jury findings of negligence on the part of" the Railroad, and reversed the judgment of the Trial Court, and rendered judgment that the Plaintiff take nothing by his suit. *Thompson v. Gibson*, 298 SW 2d 97. This Court reversed that decision, however, holding that "the proofs justified with reason the jury's conclusion that employer negligence played a part in producing [Plaintiff's] injury." *Gibson v. Thompson*, 355 US 18. Accordingly the Supreme Court of Texas affirmed the judgment of the Trial Court (310 SW 2d 564), and issued its mandate on March 14, 1958 (Ex. 338, 339). The Railroad paid the judgment with interest on March 17, 1958. (Ex. 104, 220, 424).

3. The Plaintiff's claim or grievance against the Railroad.

Shortly after collecting the judgment, the Plaintiff requested the Railroad to return him to service as a Locomotive Engineer; but the Railroad refused to do so, and has never done so. He considered himself aggrieved by this, and instituted a grievance over it, claiming that the Railroad should be required to return him to service and to pay him for all time he had lost since July 1, 1958. The Plaintiff was a member of the Brotherhood of Locomotive Engineers (Appendix Volume, page 13), and that Brotherhood was and is the representative for collective bargaining purposes of all of the Railroad's employees in the class or craft in which

has was employed. The Plaintiff's claim or grievance was presented and handled for him by the Brotherhood, and was appealed up to and including the highest officer of the Railroad that was designated to handle such disputes. All of them declined it, and the Railroad's highest officer declined it by a letter dated October 2, 1958. (Ex. 220, 221; 424).

The Brotherhood's officials continued to argue with the Railroad about the Plaintiff's claim until July of 1959 (Ex. 95, 447, 448). It was not until October of 1959 that they referred the dispute to the First Division of the Railroad Adjustment Board and instituted proceedings with that Division by filing their ex parte submission of the dispute (Text: Ex. 92-104), with the Board in accordance with Section 3, First (i) of the Railway Labor Act and the Board's Rules (Ex. 192-194, 463; Ex. 416-419; App. 269, 270, 275, 276).

The Railroad, in its Answering Submission (Text: Ex. 9-67), argued that the Plaintiff's claim was barred by a Time Limit Agreement, which is Section 17 of a National Agreement of August 11, 1948 (Text: Ex. 247-273). After the Brotherhood's Reply (Text: Ex. 68-91) was filed (Ex. 177), and the record completed (Ex. 176), the Board notified the parties on May 13, 1960 (Ex. 175, 464) that the case was being held in abeyance pending disposition by the parties themselves of the new dispute over the time limit question; because the Railroad and the Brotherhood had established a

special disputes committee to deal with disputes like that. (Ex. 274-277; App. 263, 266, 267, 279-282).

The dispute over the time limit was submitted to the Disputes Committee in writing (Brotherhood: Ex. 169-172 and 452-455; Railroad: Ex. 456-471; Brotherhood: Ex. 431-450), and the National Mediation Board constituted the Disputes Committee into Special Board of Adjustment No. 390 (Ex. 278-281). The Special Board rendered a decision on June 26, 1961 (Ex. 282, 283, 429, 430; App. 264, 280-282) to the effect that the claim for pay was barred, but that the claim for return to service was not. (App. 282, 288-290). This Award was formally certified early in 1962 to the First Division of the National Railroad Adjustment Board. (Ex. 158-161; 341).

Award 20369, and an Order to the Railroad to make it effective, were issued by the First Division of the National Railroad Adjustment Board on October 31, 1963. (App. 2-5, Ex: 6-8, 155-157, 284, 342, 343). A dispute arose over the interpretation of this Award (Ex: 149-154, 285), and the Brotherhood requested an interpretation in the light of that dispute. (Ex. 225, 422). The official Interpretation was issued on March 18, 1964. (App. 5-7; Ex. 148). Thereafter, the Labor Members issued a dissent (Ex. 142-147), and the Carrier Members issued a Supporting Opinion (Ex. 137-141), and both of those separate opinions were printed with the final printed version of the Interpretation (Ex. 2-5, incomplete, 344-348, complete).

The result of the Award, as the District Court correctly found, was that the Board

> "declined to order a return to service,"

because it held that

> "having prosecuted to successful conclusion a claim of permanent disability, Gibson is now estopped to assert his ability to return to work for the same employer." (Petition, page 24)

4. Gibson v. Johnson.

On April 23, 1965, the Plaintiff filed suit against the Brotherhood and its General Chairman for the damages he had suffered from the loss of his right to resume work, claiming that this was due to their intentional wrongdoing in causing him to lose his case before the Board. (Ex. 286-294, 426). The Trial Court rendered a judgment on March 31, 1966, that the Plaintiff take nothing by that suit (Ex. 363, 364); and he perfected an appeal on April 21, 1966. (Ex. 365-368). While the present suit was actually filed on June 1, 1966, the Plaintiff made no effort to dispose of it until after the final termination in March of 1968 of *Gibson v. Johnson.* (See Docket Entries, at the front of the Appendix Volume).

The Texas Court of Civil Appeals in 1967, affirmed the judgment of the Trial Court, because it held that the Plaintiff "was estopped as a matter of law to claim his right to re-employment." It held that any question about wrongdoing by the Brotherhood or its General Chairman became immaterial, because they could not

have won his case before the Board in any event. (414 SW 2d 235; Ex. 375-385, 389-397).

The Supreme Court of Texas determined that there was "no error requiring reversal of the judgment of the Court of Civil Appeals;" and so it refused the Plaintiff's application for a writ of error (Ex. 398-400). This Court, on March 4, 1968, denied the Plaintiff's petition for a writ of certiorari. (Ex. 401-403, 390 US 946).

5. This suit, Gibson v. Missouri Pacific.

Having exhausted his efforts to collect damages from the Brotherhood for causing him to lose Award 20369, the Plaintiff then turned his attention to his effort in the present case, to have the Award set aside. He made vigorous but vague charges of fraud, collusion, concealment and bad faith (App. 19-32, 69, 70); but he offered no evidence, and the District Court did not find, that any such thing had occurred.

The actual trial of this case lasted approximately two and a half hours (See Docket entries, at the front of the Appendix); and, omitting the text of papers that were offered in evidence but not read into the record, it takes up some 70½ pages of the Appendix (166-168, 200-201, 223-224, 233-298). However, the District Court held that Award 20369 is "clearly arbitrary as being without foundation in reason or fact," and set it aside, and ordered the case remanded to the Board with the "instruction to make new and appropriate findings as to the nature and extent of Gibson's present disability,

if any, to work as a locomotive engineer and whether he has been wrongfully withheld from service."

The Plaintiff alleged, in his first suit against the Railroad, that he was 45 years old in 1950 when he suffered the injury in question (Ex. 330, 331); and this, if true, would make him 66 in 1971. There is no evidence in this case that he is not presently eligible for an annuity or pension under the Railroad Retirement Act (45 US Code Sec. 228; *Taylor v. Finch*, 418 F 2d 1232 (8th Cir., 1969), nor that he has ever made application for any kind of pension or annuity. So far as the Railroad knows and believes, he can obtain an annuity whenever he chooses to apply for one.

REASONS FOR NOT GRANTING THE WRIT

Summary of the Argument

The Petition does not fairly represent the case, and it so garbles the facts and confuses the issues that it defies analysis or discussion. As indicated by the "Questions Presented for Review," there were many good reasons for the Court of Appeals to reverse the judgment of the Trial Court; and the one selected and explained by the Court of Appeals in its opinion is adequate grounds for this Court refusing to review the case. Furthermore, in order to reach a different result from the one reached by the Court of Appeals, it would be necessary for this Court to consider every one of the "Questions Presented for Review", as set forth above, and to rule adversely to the Respondent's contentions

on every one of them. If review were to be granted, the Respondent would want to brief and argue each one of these reasons fully. However, it would seem to be sufficient to point out here that this is the second time that this Petitioner has litigated the same ultimate issue on the merits, and that, when that issue was finally decided against him the first time, this Court, in 1968, denied his petition for a writ of certiorari. There is no reason why his claim or grievance should be allowed to improve with age or practice.

ARGUMENT

1. If there are any points in the Petition which require consideration, the Plaintiff-Petitioner has not presented with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of those points.

1-A. It is improper to assume that the District Court's judgment was merely an interlocutory order.

On page 3 of his Petition, under the heading "Statement of Grounds on Which Jurisdiction of This Court is Invoked," the Plaintiff tells this Court that

> "The order of the District Judge was an interlocutory order but was appealed with permission under * * * Title 28, United States Code, Section 1292(b)."

The District Court understood very well that it had set aside the Award of the National Railroad Adjust-

ment Board, which had decided the dispute in favor of the Defendant, and that it had ordered the Board *not* to decide the case in favor of the Defendant on the ground of estoppel, but to determine whether the Plaintiff is actually able to perform the work with safety, and to decide the dispute on that basis. Accordingly the District Court said, in its Amendatory Order of July 10, 1970, (Petition, page 35), that the Court was

> "of the opinion that the * * * Order of June 17, 1970, * * * is an appealable, final order."

The Defendant did take an appeal with permission, as from an interlocutory order, under 28 U. S. Code Sec. 1292 (b), in order to protect itself against the consequences of uncertainty in this respect; but the Defendant also took an appeal as of right, as from a final judgment, under 28 U. S. Code Sec. 1291. (App. 156-164). Then, in the Court of Appeals, upon Motion by the Defendant, the two appeals were consolidated, by an order entered on September 21, 1970.

Therefore, the only determination that has been made, as to whether the District Court's judgment was merely interlocutory, was the District Court's own determination that it was NOT. Since the entry of the order of September 21, 1970, there has been no agreement, no decision, and no debate, as to the character of the District Court's decision in this respect, because the issue has been moot.

1-B The Petitioner-Plaintiff definitely lost his case before the National Railroad Adjustment Board.

On page 2, in his "Statement of Grounds on Which Jurisdiction of this Court is Invoked," the Plaintiff characterizes the action by the National Railroad Adjustment Board as "inadequate." A careful reading discloses that this is not merely a value judgment, but is a factual allegation and is one that is not correct.

Further on in the same paragraph, he argues, incorrectly, that he

> "never had a true ruling on the merits of the controversy by the Board."

Then, assuming the truth of what is clearly not correct, he goes into an agrument which does not deal with reality at all. He argues:

> "that later, after failing to secure the necessary orders to allow him to return to service under his labor contract, he requested that further proceedings be undertaken, and was never advised of the intention of the Union to abandon the case, or the fact that no further arbitration proceedings were being undertaken, or that no suit would be filed, until less than a year prior to this suit."

On page 5, in his "Statement of Facts," the Plaintiff suggests to the Court, erroneously, that the Adjustment Board actually ruled in his favor, and that he thought all the time that the Union intended to force the De-

fendant to let him enjoy the fruits of his victory. He says:

> " * * * he was never advised that the Union did not intend to proceed with this request" (Page 249),

that is

> "to implement the ruling of the Board in his favor."

On page 7, in the Section entitled "Reasons for Granting the Writ," the Plaintiff says that it was

> "proved to the satisfaction of the Honorable District Judge:
>
> " * * *
>
> "(4) That there has never been any determination on the merits of Petitioner's claim to return to service by any tribunal, either administrative or judicial."

This is a misleading reference to half a statement, without any acknowledgement of the effect or existence of the other half. (See the fourth paragraph from the end of the District Court's original opinion, Petition, page 32). If the original statement had merely said this, it would not have been a correct description of the true facts.

On page 9, still under his "Reasons for Granting the Writ," the Plaintiff attempts to distinguish this case from *Union Pacific Railway Co. v. Price*, 360 US 601, by stating, incorrectly, that he

> "has never had [a ruling on the merits of the controversy] * * * Petitioner says he never had a ruling and that he wants to get one * * * "

Further on in the same paragraph he incorrectly describes the action taken by the National Railroad Adjustment Board as a mere

> "technical ruling . . ., with no concern whatsoever as to the true merits of his case."

On page 11, the Plaintiff suggests to the Court, with no justification whatever, that the action taken by the National Railroad Adjustment Board was

> "a . . . meaningless ruling, which says the Petitioner is in the right, and the Respondent was wrong, and yet fails to implement it with any meaningful relief."

And further on, on the same page, he suggests, incorrectly, that he never even

> "had knowledge that he had the final word in the arbitration process."

On page 13, in his "Conclusion," the Plaintiff tells the Court, incorrectly, that

> "the parties to the arbitration agreement had turned their back on him, and really had refused him . . . any fair determination of the matters presented."

However, the National Railroad Adjustment Board, in its offcial Interpretation of the Award, on March 16,

1964, gave a perfectly unequivocal answer to his request to go back to work, when it said

> "it was not intended to put the claimant back on the engine or return him to engine service as it was felt his testimony and that of expert medical witnesses proved that such would be unwise, and the award so held." (Petition, page 42).

The District Court understood very well that the Board had upheld the Defendant's position, and had given to the Plaintiff a clear-cut answer of "No." The District Court correctly found that the First Division of the National Railroad Adjustment Board, in its Award 20369,

> "declined to order a return to service," (Petition, page 24),

and had held that—

> " 'Claimant technically has not been discharged by the carrier but has been paid in advance what the court found to be due him for being permanently deprived of his work.' " (Ibid).

The District Court found that:

> "The position thus taken by the Division was that, having prosecuted to successful conclusion a claim of permanent disability, Gibson is now estopped to assert his ability to return to work for the same employer." (Ibid).

The District Court further found that

> ". . . the position thus taken by the First Division is that Gibson is bound by testimony offered at his trial to the effect that he was permanently disabled from railroading." (Petition, page 29).

It further found that:

> ". . . the Board's decision on the wrongful removal issue . . [was] that Gibson loses by estoppel." (Petition, page 28).

The truth of the matter is that the Plaintiff has simply decided that he will not take "No" for an answer; and so, failing to get an answer of "Yes," he closes his eyes to the truth and insists that he has not had any answer at all.

1-C. The Petitioner-Plaintiff was not disciplined and his case was not treated by the Defendant as a disciplinary matter.

On page 4 of his brief, under his "Statement of Material Facts," he tells the Court in Item (3) that

> ". . . the company treated the claim for reinstatement or return to duty as a disciplinary matter."

This is not correct. The Plaintiff proved it is not correct by the excerpts he offered from the depositions he had taken of Gordon Johnson, (App. 2237-229, 232-233) and of L. D. Johnson (App. 212). For example, the Plaintiff offered in evidence the testimony of Gordon W. Johnson that the

> "sole basis for refusal to return him to service"

was

> "that he had had his lack of working ability adjudicated at his request in the courts." (App. page 227).

Gordon Johnson explained the matter fully, elsewhere in his deposition (App. 326-334), and again in person at the trial (App. 271-276).

1-D. The Petitioner-Plaintiff was not denied the advice of counsel.

On page 2 of his Petition, in his "Statement of Grounds on Which Jurisdiction of this Court is Invoked," the Plaintiff contends incorrectly that

> "he . . . was rebuffed, both by the Board and by the Union for seeking the advice of counsel."

On page 5, in Item (4) of his "Statement of Material Facts," he repeats his inaccurate statement that he

> "was accused of unethical conduct for seeking legal advice (Appendix Court of Appeals, Page 248)."

On page 8, under his "Reasons for Granting the Writ," he states, incorrectly, that

> "the District Court . . . accepted the Petitioner's contention . . . . . supported by testimony and the records before that Court;
>
> ". . .
>
> "(2) That Petitioner was prevented from having a hearing (and a timely review of his case) by:
>
> ". . .
>
> "(b) Stern reprimands both from the Union and the Board for seeking assistance of legal counsel."

The District Court did not accept any such contention, and the testimony and records before the Court do not support any such contention.

In the same Section, in the first paragraph on page 10, he tells the Court, incorrectly, that

> ". . . Gibson sought legal assistance where upon he was rebuffed by his Union and by the Secretary of the Board. This engineer, therefore, . . . was compelled to suffer an arbitrary, discriminatory ruling, without the aid of an attorney."

In the second paragraph on page 10, he again relies on the misleading representation that he had

> "been rebuffed for seeking legal advice."

In the third paragraph on page 10, he complains that this alleged but non-existent denial of counsel constituted a denial of due process.

In the fourth paragraph on page 10, he argues that it would be

> "one thing for a litigant knowingly to waive a right to counsel with full knowledge of his rights. It is quite another to tell him he has no right to counsel . . ."

This argument could only be made applicable to this case by the assumption that someone told this Plaintiff that he had no right to counsel; but there is no evidence that anyone, least of all the Defendant, ever told him that.

On page 11, still in the Section on "Reasons for Granting the Writ," the Plaintiff continues to make use of this incorrect assumption, and argues a fictitious question as to when it was that he first acquired:

> "knowledge . . . that he . . . was now free to employ an attorney to seek a review of the wreckage."

The true facts are, however, that the Plaintiff's lawyer was Mr. Harry D. Moreland, of the Tulsa law firm, which was known as Doerner, Rinehart and Stuart from 1952 to 1955 (See Exhibit Volume, pages 324 to 331) and as Doerner, Stuart, Moreland, Campbell & Saunders in 1959 and 1960 (See Exhibit, pages 187, 420-421 and 243). While the various Court records in *Gibson v. Thompson* and *Gibson v. Johnson* show that the Plaintiff used various different local attorneys in Texas, it is clear from the foregoing citations, and from the Plaintiff's own testimony (Appendix Volume, pages 254-257) and from the Court's own records, in *Gibson v. Johnson*, 390 US 946, that this Mr. Moreland, who had been representing and advising the Plaintiff at least since 1952, was still representing him before this very Court as late as 1968. These records actually show affirmatively that the Plaintiff has had one or more lawyers in his employ every year since 1952, when he filed his first suit in this dispute (Exhibit, page 423). They also show, as he testified, that he was receiving advice about this case from Mr. Moreland before and during the time this case was pending before the National Railroad Adjustment Board, as well as immediately thereafter.

In making these allegations in his Petition, the Petitioner-Plaintiff relies on an extract from Appendix pages

247-250, and reproduces them as Appendix N to his petition. However, the language the Plaintiff is relying on did not come from the Plaintiff, but from the Plaintiff's lawyer. It consisted of two passages; namely:

> ". . . both the Board and the Union objected to you having an attorney."

and:

> "accused of unethical conduct in employing an attorney."

In each instance, the record show that this language was framed and uttered by the Plaintiff's lawyer, rather than the Plaintiff, and was merely acquiesced in by the Plaintiff. (See Appendix, page 248).

The Defendant had already made a diligent but unsuccessful effort to get the District Court to stop the Plaintiff's lawyer from leading the Plaintiff in this manner. The Defendant had objected that the Plaintiff's lawyer

> "is testifying and the witness is just saying 'yes' or 'no' and I think it is leading,"

but this objection had just been overruled by the Court; (Appendix, page 238).

However, it was made clear by the Plaintiff on cross-examination, (Appendix 254-257), and by Gordon Johnson (Appendix 292-295), and by actual correspondence in evidence (Exhibit Volume, pages 187, 241, 181, 180 and 242) that the true facts are these. In 1959

and 1960, before either one of the Adjustment Boards had ruled on his case, the Plaintiff and his lawyer and the Union were each trying to handle this case separately with the National Railroad Adjustment Board; and what the Plaintiff was told was that, if he wanted the Union to handle his case, he would have to stop the interference by himself and his lawyer. That is all there is to this exaggerated charge about being denied the assistance of counsel; and it does seem absurd to have to answer such a charge in a dispute which has already been to this Court twice before. (See 355 US 18, 1957; and 390 US 946, 1968).

1-E. The Petitioner-Plaintiff was not denied a hearing.

On page 2, under his "Statement of Grounds on Which Jurisdiction of this Court is Invoked," the Plaintiff contends, incorrectly, that

> "he requested a hearing, and . . . that he was deprived of such a hearing."

On page 5, under his "Questions Presented," the Plaintiff tells the Court, incorrectly, that

> "(5) This Petitioner never waived a hearing, and on the contrary he made three trips to the Headquarters of the National Railroad Adjustment Board in order to assure that he would be present at the hearing, and nevertheless he was denied a hearing. (Gibson's testimony Pages 240-241).
>
> "(6) There is nothing whatsoever in this record to show that Gibson either actively or passively waived a hearing."

Under his "Reasons for Granting the Writ," the Plaintiff tells the Court, incorrectly, on page 8, that

> "... the District Court ... accepted the Petitioner's contention ... supported by testimony and the records before that Court;
>
> "...
>
> "(2) That Petitioner was prevented from having a hearing ..."

Under the same Section, he states incorrectly, on page 9, that:

> "Gibson's right to a fair hearing in this case has been blocked ..."

On page 12, under the same heading, he goes on to complain, incorrectly, that

> "... He requested a hearing and was left out entirely. ... It is a cynical twist of judicial logic that would turn this man out without a hearing, after his having sought diligently for a hearing ..."

Again on page 13, under his "Conclusion," the Plaintiff tells the Court, incorrectly, that:

> "... the parties to the arbitration agreement ... really had refused him a fair hearing."

The true facts, as disclosed by the printed Appendix Volume and the printed Exhibit Volume from the Court of Appeals, are to the contrary.

The Plaintiff testified that he went to the Headquarters of the National Railroad Adjustment Board

only two times, rather than three times (Appendix, pages 255, 256). He did not testify, and there is no evidence, that he ever made a request to the adjustment board to permit him to be present at the hearing of his grievance. In regard to the hearing of the case, the rules of the National Railroad Adjustment Board state that

> "Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect,"

but they expressly state that

> "Parties to a dispute are required to state in all submissions whether or not an *oral* hearing is desired." (Exhibit Volume, page 418; emphasis added.)

The written original submission of the Plaintiff's claim [Exhibit Volume, pages 92-97], filed with the National Railroad Adjustment Board on October 16, 1959 (Exhibit, page 193), concludes with the statement that

> "*Oral* hearing not desired unless requested by the Carrier." (Exhibit, page 97, emphasis added.)

And the written answering submission by the Defendant (Exhibit, pages 9-67) states that

> "*Oral* hearing is not desired." (Exhibit, page 52, emphasis added).

Thereafter a further Reply or Rebuttal Submission was filed on behalf of the Plaintiff's claim. (Exhibit, pages 68-91).

It is clear, therefore, that the Plaintiff, through his authorized representative, *did waive* an oral hearing. It is equally clear, from his rebuttal submission (Exhibit, pages 68-91), and from the dissent by the labor members on the Board (Exhibit, pages 3, 4, 144, 147, 344 and 345), that the case was fully heard and debated, and received heated and extensive consideration.

1-F. After losing his case before the National Railroad Adjustment Board, the Petitioner-Plaintiff had time to sue his Union for causing him to lose it, and did not try to file this suit until after he had lost his suit against the Union.

On pages 2 and 3 of his Petition, under the heading "Statement of Grounds on Which Jurisdiction of this Court is Invoked," the Plaintiff contends, incorrectly, that

> "he . . . was never advised of the intention of the Union to abandon the case, . . . or that no suit would be filed, until less than a year prior to the institution of this suit."

Again, on page 4, under the heading "Questions Presented," he tells this Court, incorrectly, that he

> "did not have full knowledge of the fact that his case had been abandoned, and arbitration procedure completed, and no further action to be taken, until less than one year prior to the institution of this suit."

The true facts are that the Award of the National Railroad Adjustment Board was rendered on October

31, 1963, and the Interpretation was issued on March 18, 1964. On April 23, 1965, (See Exhibits, page 426) the Plaintiff filed suit against his Union and its principal officer for damages for causing him to lose his case before the National Railroad Adjustment Board (Exhibits, pages 286-294); and on March 31, 1966, a judgment was entered against him in that suit (Exhibits, pages 363-364). The present suit, against the Railroad, was not filed until June 1, 1966, which was more than 13 months *after* he had filed suit against his Union for intentionally causing him to lose his case before the Board. It is absurd for the Plaintiff to tell this Court that he was ignorant of the situation and believed that his Union was going to file suit for him on this claim against the Railroad, at the time when he was actually suing his Union and accusing them of intentionally causing him to lose this claim.

1-G. Since this Court has already refused to review or disturb the unsuccessful outcome of the Petitioner-Plaintiff's suit against his Union, his charges of misconduct by that Union during the period involved in that suit, from 1958 to 1965, would not constitute grounds for review of the unsuccessful outcome of his subsequent suit against his Employer.

We have already seen that the Plaintiff complains rather vaguely, on pages 2, 3 and 4, 10 and 11, that he requested the Union to proceed further, and that the Union abandoned his case without telling him about it.

Also on page 5 in his "Statement of Material Facts," he complains that

> "he made a request in writing to his Lodge that legal proceedings be undertaken . . . and he was never advised that the Union did not intend to proceed with this request. (Page 249)."

We have already seen, too, that he complains, five or six times, that his Union would not let him have a lawyer or a hearing, although it does not appear that that is an accurate representation of what happened. And we have already seen that the Petitioner-Plaintiff actually sued the Union and its principal officer, for damages for intentionally causing him to lose his right to resume work.

An examination of the charges he made against the Union in that suit (Appendix, pages 323-331) shows that he did not accuse the Union of those particular things in that suit, though they were no worse than other things he did accuse them of. Those new charges against his Union seem even less credible than the others, because they first appear in the present suit, to which the Union is not a party.

The Plaintiff also complains, on page 5, of various other matters which he says took place at Union meetings, and between him and the Union.

On page 10, he says, without any justification, so far as the Defendant is aware, that he

> "ascertained that the Union had no intention of helping him and had never had any."

On page 8, still in his "Reasons for Granting the Writ," the Plaintiff tells the Court that

> "the District Court . . . accepted the Petitioner's contention . . . supported by testimony and the records before that Court;
>
> ". . .
>
> "(2) That Petitioner was prevented from having a hearing (and a timely review of his case) by:
>
> ". . .
>
> "(c) Bad faith concealment by the Union of its intent to drop Petitioner's case."

So far as we can ascertain there is no justification in the record, either for saying that the District Court accepted any of this, or for saying that any of it was supported by testimony and the records before the District Court. Both of the Plaintiff's witnesses were former Union officials, and both of them testified that they never concealed anything from him. (Appendix, pages 197 and 358).

When the Petitioner-Plaintiff sued his Union and its principal official, claiming that they wilfully caused him to lose his right to resume work for the Defendant, the Texas Courts denied him any recovery on the ground that the Union could not have won his case in any event, because he was legally estopped to deny his permanent disability to work for the railroad, and so was not entitled to win his case. See *Gibson v. Johnson*, 414 SW 2nd 235 (1967) and this Court denied his petition for a writ of certiorari (390 US 946, 1968).

Since the Union's alleged misconduct was immaterial to his suit against the Union, because he was not entitled to win his claim against his Employer in any event, the Union's alleged misconduct would still be immaterial, when he sues his Employer on the claim that he was not entitled to win in any event.

And this alleged misconduct by the Union is even less material here, because there is not even a suspicion of evidence that the Defendant-Employer committed any of it, or participated in any of it. The Defendant refused to return the Plaintiff to service in 1958, and there is no question but that the Defendant has steadfastly adhered to that refusal and to its position in this case for the last thirteen years. There is no evidence or suggestion of evidence in this case of any "bad faith concealment," or the like, by the Defendant. The only evidence on the subject at all is the testimony by the Plaintiff's witness, L. D. Johnson, that

> "... there was never any collusion on my part as far as I know. I handled the case to the best of my ability without any kind of understanding with anybody." (Appendix, page 358).

2. *The Judgment of the Court of Appeals was correct.*

2-A. *As held by the Court of Appeals, this action is barred by limitations under 45 US Code Section 153, because it was not filed until June 1, 1966.*

2-B. *The Plaintiff is not entitled to relitigate, in the present suit, the same estoppel issue that was finally*

decided against him in the previous suit, which he voluntarily brought in State Court, and voluntarily presented to the Courts at every level from the Trial Court to this Court.

Before filing the present suit, the Plaintiff had already filed, and lost in the Trial Court, and appealed to the Texas Court of Civil Appeals, a suit against his Union and its General Chairman for damages for wrongfully causing him to lose his right to resume work for the Railroad as a Locomotive Engineer.

In that case, no one questioned the assumption that the Award was final and binding and effective, nor suggested that the Plaintiff might be able to have it set aside and resume work. Even after filing the instant suit, the Plaintiff allowed it to languish inactively, while he pursued the other one as vigorously and as far as he could.

The Texas Court of Civil Appeals found a kind of privity between the Union in that suit and the Railroad in this suit; because it held, in effect, that the Union in that suit stood in the shoes of the Railroad, and could successfully assert, in its own behalf in that suit, the Railroad's defense of estoppel. According to the Texas Court of Civil Appeals, the reason why the Plaintiff did not and could not win his suit against his Union was as follows:

> "... the rights of the parties would be controlled by the same rules governing the liability of an at-

> torney to his client.... 'The attorney stands in exactly the same position as that in which the defendant in the lost suit would have stood in the trial against him, and is entitled to present to the jury every fact that would have tended to lessen the damages against that defendant.
>
> ...
>
> "... the evidence conclusively shows that irrespective of any misfeasance or non-feasance on the part of the appellees [Union and General Chairman], appellant [Plaintiff] was estopped as a matter of law to claim his right to re-employment. The defense of estoppel having thus been shown to exist as a matter of law, the question of whether appellees were guilty of misfeasance or nonfeasance becomes immaterial... appellant's claim against the railroad for re-employment was barred by estoppel...
>
> "... Obviously, if appellant was disqualified from seeking re-employment by reason of his suit against the railroad for total permanent disability, he would have no right to receive back pay..." (Ex. 379 *et seq.*)

In effect, this was the Appellate Court's explanation, as well as its approval, of the decision rendered in March of 1966 by the Trial Court. This decision was approved by the Supreme Court of Texas, in 1967, as presenting no reversible error. (Ex. 398-400) Then the Plaintiff presented the dispute to this Court, and this Court denied a petition for a writ of certiorari, in March of 1968. (Ex. 401-403) The Plaintiff's personal friend and attorney, who had represented him in his initial suit for personal injuries, and had advised and assisted

him in his proceeding before the National Railroad Adjustment Board, (App. 256-257) approved as to form the judgment against the Plaintiff in the Trial Court in 1966 (Ex. 364), and acted as his attorney in presenting his petition to the Court. (See 355 US 18) There is no question but that the Plaintiff's case was thoroughly and diligently presented to the Courts at every level; and there is also no question but that they unanimously decided it against him on this *very same issue* of estoppel.

Therefore, the Plaintiff is precluded from litigating the same claim again in this suit by the principles declared in a long line of cases dealing with *res judicata* and estoppel. One very helpful case is *Crosland-Cullen Co. v. Crosland*, 105 SE 2nd 655 (N. C., 1958), which held that the Plaintiff was barred by the adverse decision received in *Philadelphia Life Insurance Co. v. Crosland-Cullen Co.*, 234 F. 2nd 780 (4th Cir., 1956). There are many other such cases, before and since that one, and most notably there is the unanimous decision of this Court on May 3, 1971, in *Blonder-Tongue Laboratories, Inc., vs. University of Illinois Foundation*, No. 338, 39 US Law Week, 4506, 28 L. Ed. 2nd 788. As Mr. Justice White said, in discussing and applying these principles in the latter case (28 L. Ed. 2nd at 800).

> "...Permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of a gaming table or a 'lack of discipline and of disinterestedness on

> the part of the lower courts, hardly a worthy or wise basis, for fashioning rules of procedure.'"

The Defendant pleaded this defense of *res judicata* or estoppel (App. 59-65), and preserved it in the pre-trial order (App. 72), and requested findings and conclusions accordingly (App. 127-130, 137-138). The District Court did not make any direct reference to this defense, but evidently overruled it by implication. The Court of Appeals did not reach this issue, because of its holding that the action in this case is barred by limitations under 45 USC Sec. 153. However, if this Court's decision in the *Blonder-Tongue Laboratories Case* had come out before the decision in the present case, it is possible that the Court of Appeals might also have chosen to base its judgment of reversal on this issue, following the *Blonder-Tongue Case* and the many authorities in the line of those discussed by this Court in that case.

In Appendix M to his petition, the Plaintiff has set out a quotation from the Supreme Court of Texas in *Benson v. Wanda Petroleum Co.*, which deals with a related but dissimilar problem under Texas law. That case is clearly not in conflict with the *Blonder-Tongue Case*, and not in point here; because, in that case, according to page 85 of the Petition

> "... the plaintiff in the later suit was neither a party to the former action nor in privity with any party ...; and the cause of action always had been that of the present plaintiff, who had no voice in the conduct of the prior suit..."

In our case, however, the same man brought and appealed the previous suit against the Union, and the present suit against his employer, and he lost the former suit in every court for a reason which requires with equal force that he lose this one too.

In any event, the law to be applied on this issue is Federal Law, rather than Texas law. See *O'Brien v. Western Union Telegraph Co.*, 113 F. 2nd 539 (1st Cir., 1940); *Textile Workers Union of America v. Lincoln Mills of Ala.*, 353 US 448 (1957); *Crockett v. Union Terminal Co.*, 342 SW 2nd 129 (Tex. Civ. App., Dallas, 1960), and the cases cited by *Crockett* at page 133; and generally "The Federal Common Law," 82 Harvard Law Review 1512 (May, 1969).

This principle was clearly and expressly applied as Federal Law by Augustus Hand in *Adriaanse v. U. S.*, 184 F. 2nd 968 (2nd Cir., 1950), cer. den. 340 US 932 (1951); and it was also adopted and applied in *Lober v. Moore*, 417 F 2nd 714 (D. of Col., 1969), as well as by this Court in the *Blonder-Tongue Case* in 1971.

2-C. *Other reasons, which were pleaded and preserved in the District Court, and were asserted and briefed in the Court of Appeals, and are included within the Questions Presented, also support the Judgment.*

It seems unnecessary to cover these other issues at this time; but they would all be presented, and the Defendant would want to brief and argue all of them, if the Court were to undertake to review this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorney for the Respondent
MISSOURI PACIFIC RAILROAD COMPANY

August, 1971

Appendix: Chronological Index to the Printed Record.

Date		Citation to Record
3- 1-29	Basic Collective Bargaining Agreement, introduced (App. 167) as Plaintiff's Exhibit 1.	Ex. 195-217
10-10-34	Circular No. 1: National Railroad Adjustment Board, introduced (App. 269) as Railroad's Exhibit 17.	Ex. 416-418
8-11-48	National Agreement, of which Section 17 provided for "Time Limit on Claims." A copy, certified by the National Mediation Board (Ex. 246) was introduced (App. 263) as Railroad's Exhibit 3.	Ex. 247-273
6-29-49	National Agreement providing procedure for Joint Committee to handle disputes over the application of the National Agreement of August 11, 1948, introduced (App. 263, 266, 267) as Railroad's Exhibit 4.	Ex. 274-277
10-14-49	Circular B, First Division. NRAB, introduced (App. 269) as Railroad's Exhibit 18	Ex. 419
12- 5-52	Plaintiff's Original Petition in *Gibson v. Thompson.*	Ex. 324-327
6-29-55	Plaintiff's First Amended Original Petition in *Gibson v. Thompson.*	Ex. 328-331
8- 8-55	Judgment by Trial Court in *Gibson v. Thompson.*	Ex. 98-103, 332-337
3-29-56	Award 17452 issued by First Division of NRAB.	Ex. 349-350
3-14-58	Mandate issued by Supreme Court of Texas in *Gibson v. Thompson.*	Ex. 338-339

3-17-58 Receipt by Plaintiff and his attorney for payment of Judgment in *Gibson v. Thompson.* Ex. 104

7- 2-58 Letter, Brotherhood's Local Chairman Jones to Superintendent Fletcher. Ex. 459

7- 5-58 Letter, Plaintiff to Trainmaster Mathews. Ex. 39, 465

7- 7-58 Letter, Superintendent Fletcher to Brotherhood's Local Chairman Jones. Ex. 434

7-14-58 Letter, Superintendent Fletcher to Brotherhood's Local Chairman Jones, introduced (App. 259, 260) as Railroad's Exhibit 1. Ex. 39, 92, 93, 244, 435, 467

7-14-58 Letter, Superintendent Fletcher to Plaintiff. Ex. 40, 466

8-13-58 Letter, Brotherhood's General Chairman Johnson to Asst. Gen. Mgr. Walker. Ex. 93, 435, 468

9-12-58 Letter, Asst. Gen. Mgr. Walker to Brotherhood's General Chairman Johnson. Ex. 41, 93, 94, 436, 469

9-23-58 Letter, Brotherhood's Gen. Chairman Johnson to Chief Personnel Officer Smith. Ex. 41, 436, 437, 470

10- 2-58 Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson, introduced (App. 263) as Railroad's Exhibit 1. Ex. 42, 245, 437, 471

10-29-58 Letter, Brotherhood's General Chairman Johnson to Asst. Gen. Mgr. Walker. Ex. 437, 438

Date		Citation to Record
10-29-58	Letter, Brotherhood's General Chairman Johnson to Chief Personnel Officer Smith	Ex. 438
10-30-58	Letter, Asst. Gen. Mgr. Walker to Brotherhood's General Chairman Johnson	Ex. 438, 439
11-24-58	Letter, Brotherhood's General Chairman Johnson to Chief Personnel Officer Smith	Ex. 43, 439
12-30-58	Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson	Ex. 43, 440
1-13-59	Letter, Brotherhood's General Chairman to Chief Personnel Officer Smith	Ex. 440
1-23-59	Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson	Ex. 441
1-26-59	Letter, Brotherhood's General Chairman Johnson to Chief Personnel Officer Smith	Ex. 441
1-30-59	Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson	Ex. 442
2-13-59	Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson	Ex. 442
2-24-59	Letter, Chief Personnel Officer Smith to Brotherhood's General Chairman Johnson	Ex. 94, 443

Date		Citation to Record
3-13-59	Letter, Brotherhood's General Chairman Johnson to Brotherhood's Grand Chief	Ex. 444
3-16-59	Letter, Brotherhood's Grand Chief to Brotherhood's General Chairman Johnson	Ex. 444, 445
3-24-59	Letter, Brotherhood's Asst. Grand Chief Hobart to Brotherhood's General Chairman	Ex. 445, 446
6-11-59	Letter, Chief Personnel Officer Smith to Brotherhood's Asst. Grand Chief Hobart	Ex. 94, 446, 447
7- 3-59	Letter, Brotherhood's Asst. Grand Chief Hobart, to Director of Personnel Love	Ex. 95, 447, 448
10- 9-59	Letter, Brotherhood's Grand Chief to Secretary, NRAB	Ex. 194
10-12-59	Letter, Brotherhood's General Chairman Johnson, to Secretary, NRAB	Ex. 193, 463
10-12-59	Text, Employees' Ex Parte Submission of Plaintiff's Grievance to NRAB	Ex. 92-104
10-20-59	Notice, NRAB to Railroad	Ex. 192
11-13-59	Letter, Railroad to NRAB	Ex. 191
11-16-59	Notice, NRAB to Railroad	Ex. 190
11-25-59	Text, Railroad's Answering Submission to NRAB	Ex. 9-67
12- 4-59	Statement, Dr. Czeskleba	Ex. 188
12-15-59	Letter, Plaintiff's attorney to NRAB	Ex. 187

Date		Citation to Record
12-16-59	Notice, NRAB to Brotherhood	Ex. 189
1- 4-60	Letter, Plaintiff to Brotherhood's Grand Chief	Ex. 186
1- 7-60	Plaintiff appears in person at NRAB (See Ex. 181 and 185)	
1- 7-60	Notice, NRAB to Brotherhood	Ex. 185
1- 8-60	Letter, Brotherhood's General Chairman to NRAB	Ex. 184
1-12-60	Letter, Brotherhood's Grand Chief to Brotherhood's General Chairman, introduced (App. 306) as Plaintiff's Exhibit 7.	Ex. 241
2- 1-60	Letter, Brotherhood to NRAB	Ex. 183
2- 3-60	Notice, NRAB to Brotherhood	Ex. 182
2- 9-60	Letter, Plaintiff to NRAB	Ex. 181
2-11-60	Letter, NRAB to Plaintiff introduced (App. 306, 307), as Plaintiff's Exhibit 8.	Ex. 180, 242
3- 5-60	Letter, Brotherhood to NRAB	Ex. 179
3- 9-60	Notice, NRAB to Brotherhood	Ex. 178
4- 8-60	Letter, Brotherhood to NRAB	Ex. 177
4-12-60	Text, Employees' Reply to Railroad's Answer on Plaintiff's claim	Ex. 68-91
4-12-60	Notice, by NRAB, Record is complete	Ex. 176
5-13-60	Letter, NRAB to parties, case held in abeyance	Ex. 175, 464

Date		Citation to Record
7- 8-60	Letter, Plaintiff's Attorney to Defendant's Attorney, introduced (App. 278, 279) as Railroad's Exhibit 19	Ex. 420-421
7-12-60	Letter, Railroad's Attorney to Plaintiff's Attorney, introduced (App. 307) as Plaintiff's Exhibit 9	Ex. 243
8-30-60	Letter, Plaintiff to NRAB	Ex. 174
9- 2-60	Letter, NRAB to Plaintiff	Ex. 173
10-25-60	Letter, Brotherhood's Grand Chief to Plaintiff, introduced (App. 262) as Plaintiff's Exhibit 6	Ex. 240
11-10-60	Letter, Brotherhood's Grand Chief to Plaintiff, offered in evidence (App. 261) as Plaintiff's Exhibit 4 over the objection of the Railroad (App. 362), which was made in accordance with the Court's instructions (App. 168, 200, 201), and overruled by the Court (App. 355, 359)	Ex. 237-238
1- 5-61	Certified (See Item 2, Ex. 246) copy, Joint Letter, from Disputes Committee to National Mediation Board, introduced (App. 263, 264) as Railroad's Exhibit 5	Ex. 278-279
1- 9-61	Letter, Brotherhood's General Chairman Johnson to NRAB	Ex. 168
1- 9-61	Text, Employees' Submission of Time-Limit Dispute over Plaintiff's grievance to Disputes Committee	Ex. 169-172, 452-455

Date		Citation to Record
1-16-61	Certified (Item 3, Ex. 246) Copy of telegram from National Mediation Board, introduced (App. 264) as Railroad's Exhibit 6	Ex. 280
1-18-61	Letter, NRAB to Brotherhood's General Chairman Johnson	Ex. 167
1-20-61	Text, Railroad's Answering Submission to Disputes Committee	Ex. 456-471
1-31-61	Certified (Item 4, Ex. 246) Copy of Letter from National Mediation Board, constituting Disputes Committee as Special Board of Adjustment No. 390, introduced (App. 264) as Railroad's Exhibit 7	Ex. 281
2- 7-61	Letter, Association of Western Railways to Brotherhood's Grand Chief	Ex. 451
3-17-61	Text, Employees' Rebuttal to Railroad's Submission to Joint Disputes Committee of Time Limit Dispute over Plaintiff's Grievance	Ex. 431-450
6-26-61	Decision by Special Board of Adjustment 390, on Time-Limit Dispute involved in Plaintiff's grievance, introduced (App. 264) as Railroad's Exhibit 8	Ex. 282, 283, 429, 430
11- 2-61	Letter, Brotherhood's Grand Chief to Brotherhood's General Chairman and Railroad	Ex. 166
11-17-61	Letter, Brotherhood's Grand Chief to Association of Western Railways	Ex. 162-165

Date		Citation to Record
1-22-62	Certification, by Disputes Committee of Decision	Ex. 159, 160, 161
2- 5-62	Letter, Hampton to NRAB	Ex. 161
2- 8-62	Letter, Secretary of NRAB to Members	Ex. 158
1-10-63	Letter, Brotherhood's Assistant Grand Chief to Plaintiff, introduced (App. 261, 262) as Plaintiff's Exhibit 5	Ex. 239
10-31-63	Award 20369, issued by First Division, NRAB, on Plaintiff's Grievance	Ex. 6, 7, 156, 157, 342, 343; App. 2-5
10-31-63	Order, accompanying Award 20369, introduced (App. 264) as Railroad's Exhibit 9	Ex. 8, 155, 284
11-23-63	Request, Brotherhood's General Chairman Johnson to NRAB, for Interpretation, introduced (App. 264) as Railroad's Exhibit 10	Ex. 154, 285
12- 2-63	Letter, Secretary of NRAB, to Members	Ex. 153
12-10-63	Letter, NRAB, to Railroad	Ex. 152
12-16-63	Text, Railroad's Statement of Position in Dispute over Interpretation of Award 20369	Ex. 149-151
3-18-64	Official Interpretation, as first made, of Award 20369	Ex. 148; App. 5-7
4-29-64	Text of Dissent by Labor Members to Board's Interpretation	Ex. 144-147
4-30-64	Letter, NRAB to Referee	Ex. 143

Date		Citation to Record
4-30-64	Letter, NRAB, to Parties	Ex. 142
5- 4-64	Text of Carrier Members' Opinion in Support of Board's Interpretation	Ex. 139-141
5- 5-64	Letter, NRAB to Referee	Ex. 138
5- 5-64	Letter, NRAB to Parties	Ex. 137
5- 5-64	Final printed version of Interpretation with subsequent dissent and concurrences added	Ex-2-5 (incomplete) 344-348 (complete)
4-23-65	Plaintiff's Original Petition in *Gibson v. Johnson*	Ex. 286-294
5-17-65	Original Answer of General Chairman Johnson in *Gibson v. Johnson*	Ex. 295
5-17-65	Special Appearance and Motion of Brotherhood in *Gibson v. Johnson*	Ex. 296-301
6- 7-65	Original Answer of Brotherhood in *Gibson v. Johnson*	Ex. 302
9- 2-65	Letter, Brotherhood's Attorney to NRAB, requesting certified copies	Ex. 135-136
9-18-65	Certificate by Secretary of NRAB on copies of the Decision by the Disputes Committee, and of Award 20369 and the Interpretation thereof	Ex. 134, 340
11-19-65	First Amended Answer of Brotherhood and Johnson in *Gibson v. Johnson*	Ex. 303-350

Date		Citation to Record
11-19-65	Defendant's Motion for Summary Judgment in *Gibson v. Johnson*	Ex. 351-353
1- 6-66	Affidavit in Support of Motion for Summary Judgment in *Gibson v. Johnson*	Ex. 354-360
3-31-66	Judgment for Defendants in *Gibson v. Johnson*	Ex. 363-364
4- -66	Notice of Appeal by Plaintiff in *Gibson v. Johnson*	Ex. 365
4-21-66	Plaintiff's Appeal Bond in *Gibson v. Johnson*	Ex. 366-368
6- 1-66	Plaintiff's Original Petition in this case, *Gibson v. Missouri Pacific*, introduced (App. 265, 266) as Railroad's Exhibit No. 16 for limited purpose	Ex. 404-415
6-20-66	Public Law 89-456 approved, amending Section 3 of Railway Labor Act	
6-22-66	Letter, Secretary of NRAB to Members	Ex. 131
6-23-66	Letter, Secretary of NRAB to Assistant U. S. Attorney, Beaumont	Ex. 130, 133
6-28-66	Letter, U. S. Attorney to NRAB	Ex. 129, 132
7- 6-66	Letter, Plaintiff's Attorney to NRAB	Ex. 128
7-12-66	Letter, Secretary of NRAB to Members	Ex. 127
7-20-66	Letter, NRAB to Plaintiff's Attorney	Ex. 126

Date		Citation to Record
8- 1-66	Certified copy of Records of Disputes Committee (Special Board of Adjustment 390) in regard to the Time Limit Dispute in this case, introduced (App. 306, 355, 356) pursuant to Court's instructions (App. 200, 201) as Railroad's Exhibit 21	Ex. 428-471
8-10-66	Letter, Plaintiff's Attorney to NRAB, received 8/12/60	Ex. 121-122
8-10-66	Certificate, by Secretary of NRAB, accompanying the Record (Ex. 1-104) which was introduced (App. 167) as Plaintiff's Exhibit 1	Ex. 123
8-11-66	Letter, Secretary of NRAB, to U. S. District Clerk, Transmitting the Certified Copy of the Record which was introduced as Plaintiff's Exhibit 1	Ex. 124
8-11-66	Letter, Secretary NRAB to Plaintiff's Attorney	Ex. 125
8-15-66	Receipt and filing of Certified Copy of the Record, later introduced (App. 167) as Plaintiff's Exhibit 1	Ex. 1-104
8-22-66	Railroad's First Request for Admissions of Fact, and Railroad's Motion for a More Definitive Statement	Not reproduced. See Docket Entries, at front of Appendix
8-30-66	Letter, Plaintiff's Attorney to NRAB	Ex. 119-120
9- 3-66	Letter, Secretary of NRAB to Members	Ex. 118
9-13-66	Letter, NRAB to Plaintiff's Attorney	Ex. 117

Date		Citation to Record
10-31-66	Plaintiff's Answers to Railroad's First Request for Admissions	See Docket Entries
10-31-66	Plaintiff's Request for Admissions of Fact, introduced (App. 233, 234) as Plaintiff's Exhibit 3	Ex. 218-228
11-29-66	Railroad's Answer to Plaintiff's Request for Admissions, introduced as Plaintiff's Exhibit 3-A	Ex. 229-236
2-28-67	Railroad's Second Request for Admissions	Docket Entries
3-29-67	Plaintiff's Replies to Defendant's Second Request for Admissions	Docket Entries
3-30-67	Decision, Texas Court of Civil Appeals, in *Gibson v. Johnson*, 414 S.W. 2d 235, introduced (App. 265) as Railroad's Exhibit 12	Ex. 375-383, 289-395
5- 4-67	Judgment, Court of Civil Appeals, *Gibson v. Johnson*, introduced (App. 265) as Railroad's Exhibit 13	Ex. 396-397
8-16-67	Railroad's Third Request for Admissions of Fact	Docket Entries
8-28-67	Plaintiff's Reply to Railroad's Third Request for Admissions of Fact	Docket Entries
10- 5-67	Orders of the Supreme Court of Texas in *Gibson v. Johnson*, introduced (App 265) as Railroad's Exhibit 14	Ex. 398-400
10-13-67	Mandate, Court of Civil Appeals to Trial Court in *Gibson v. Johnson*	Ex. 384-385

Date		Citation to Record
3- 4-68	Denial by Supreme Court of U. S. of Petition for Writ of Certiorari in *Gibson v. Johnson*, introduced (App. 265) as Railroad's Exhibit 15.	Ex. 401-403
9-23-68	Railroad's Motion to Confirm Admissions	Docket Entries
12- 9-68	Plaintiff's First Amended Petition or Complaint	App. 8-32
12-11-68	Letter, Plaintiff's Attorney, to Secretary, NRAB	Ex. 114
12-13-68	Letter, Secretary, NRAB to Members	Ex. 112
12-16-68	Telegram, NRAB, to U. S. District Clerk and Plaintiff's Attorney	Ex. 113
12-16-68	Telegram, Plaintiff's Attorney to Secretary, NRAB	Ex. 116
12-16-68	Letter, U. S. District Clerk, to Secretary, NRAB and Plaintiff's Attorney	Ex. 111
12-16-68	Defendant's Answer to Plaintiff's First Amended Original Petition or Complaint	App. 33-67
12-17-68	Memo, Secretary, NRAB to Members	Ex. 115
12-18-68	Letter, Secretary, NRAB to U. S. District Clerk	Ex. 108-110
12-31-68	Letter, Plaintiff's Attorney to Secretary, NRAB	Ex. 107

Date		Citation to Record
1-10-69	Letter, Secretary of NRAB to U. S. District Clerk (Ex. 105, 106), transmitting his correspondence file (Ex. 107-194) on the Docket involving Award 20369. The letter and entire file were introduced (App. 167) as Plaintiff's Exhibit 1-A	Ex. 105-194
6-23-69	Deposition taken of M. E. Groves. This was later introduced (App. 168) over the Railroad's objections. (App. 362-368), which were made as instructed by the Court (App. 168, 200, 201), and were overruled (App. 355, 359).	App. 169-200
8-21-69	Pre-Trial Order	App. 68-76
9-12-69	Deposition taken of Gordon W. Johnson. Portions of this were introduced by the Plaintiff (App. 223, 224), and the Railroad, complying with the Court's instructions (App. 200, 201) introduced all the rest (App. 306, 355, 356)	App. 224-233; 307-355
9-26-69	Deposition taken of Brotherhood's former General Chairman L. D. Johnson. Portions of this were introduced by the Plaintiff, and the Railroad complied with the Court's instructions (App. 200, 201) in making objections (App. 359-362), which were overruled (App. 355, 362) and in introducing other portions (App. 355-359)	App. 201-223 and 356-359

Date		Citation to Record
10- 8-69	Plaintiff's Amended Reply to Railroad's Requests for Admissions. This, in conjunction with the three original requests, were the basis for the Admissions introduced by the Railroad (App. 297) as Railroad's Exhibit 20.	Ex. 422-427 App. 298-306
11-19-69	Letter, Defendant's Attorney to District Clerk, Anderson County, Texas, requesting a certified copy of all papers in *Gibson v. Johnson*	Ex. 386
12- 4-69	Certification (Ex. 387, 388) by District Clerk of Anderson County, Texas, that the accompanying 101 pages (Ex. 286-386) are true copies of all papers on file in *Gibson v. Johnson*. These were introduced (App. 265) as Railroad's Exhibit 11	Ex. 286-388
12-19-69	Trial	Docket Entries
3-13-70	Plaintiff's Proposed Findings and Conclusions	App. 77-104
3-13-70	Defendant's Proposed Findings and Conclusions	App. 104-140
6-17-70	Memorandum Opinion and Order	App. 140-156
7-10-70	Order Amending Memorandum Opinion and Order	App. 156-157